THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.12938 OF 2004

DATED 23rd NOVEMBER 2007

BETWEEN:

Kapilavai Sakku Bai and another

… Petitioners

AND

The Revenue Divisional Officer, Eluru, West Godavari District
and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12938 OF 2004

ORDER:

The petitioners are respondents of Teegalavancha Village, Chintalapudi Mandal in West Godavari District. They filed the instant writ petition seeking a writ of Mandamus declaring the inaction of respondents in initiating proceedings under the Land Acquisition Act, 1894 (the Act, for brevity) and not paying compensation to the petitioners' land situated in the said village as illegal and arbitrary. They also pray for a consequential direction to respondents to initiate proceedings and pay compensation.

It is the case of the petitioners that their father late Kapilavai Gopa Raju was assigned land admeasuring Acs.4.36 in survey No.32/4 situated at Teegalavancha Village in 1967 by the then Tahsildar, Chintalapudi, in proceedings No.1312/67. The assignee cultivated the land till his death, whereafter petitioners succeeded to the property. In 1997, the entire extent of land was resumed by respondents for widening Erra Kalva, but, *ex gratia* or compensation under the Act was not paid. The petitioners approached the respondents and made representations, in vain. Therefore, they filed instant writ petition.

Along with the writ petition, the petitioners have annexed the xerox copy of attested copy of the 'D' form patta under which petitioners' father was assigned land in survey No.32/4. Therefore, there is *prima facie* case that the land was assigned to the petitioners' father. As the petitioners alleged that land was resumed by respondents for expansion of Erra Kalva, even as assignees they are entitled for compensation in accordance with the principles laid down by Full Bench of this Court in **LAO-cum-RDO, Chevella Division v Mekala Pandu**[1], wherein it was laid down as under.

> In the circumstances, we hold that the assignees of the Government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits on part with full owners of the land even in cases where the assigned lands are taken possession of by the State in accordance with the terms of grant or patta, though such resumption is for a public purpose. We further hold that even in case where the State does not invoke the covenant of the grant or patta to resume the land for such public purpose and resorts to acquisition of the land under the provisions of the Land Acquisition Act, 1894, the assignees shall be entitled to compensation as owners of the land and for all other consequential benefits under the provisions of the Land Acquisition Act, 1894. No condition incorporated in patta/deed

of assignment shall operate as a clog putting any restriction on the right of the assignee to claim full compensation as owner of the land.

Following the Full Bench Judgment in **Mekala Pandu** (supra), this Court in **P.Mallaiah v Government of A.P**[2] held as follows.

> Whether the Government is bound to pay compensation to the assignees under the provisions of the Act where such assigned lands are resumed by the Government for public purpose? A Full Bench of five learned Judges of this Court in **State of Andhra Pradesh v Bondapalli Sanyasi**[3] while overruling the earlier decision of Full Bench of three learned Judges in **State of A.P. v P.Peda Chinnayya**[4], held that when the land is resumed in terms of the grant, no compensation be payable towards resumption of land and that compensation, however, is payable if the lands have not been resumed by following due process of law. The Full Bench of seven learned Judges in **Mekala Pandu** case (supra) on reconsideration of the issue did not accept the view of the Full Bench of five learned Judges in **Bondapalli Sanyasi** case (supra) and held that assignees of Government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits on par with full owners of the land even in cases where the assigned lands are taken possession by the State in accordance with the terms of the grant. It was also held that the conditions incorporated in patta/deed of assignment shall not operate as a clog putting any restriction on the right of the assignee to claim full compensation as owner of the land… …
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> … … It is brought to the notice of this Court that State has filed Special Leave Petition before the Supreme Court against **Mekala Pandu** case (surpa). The Supreme Court has passed orders staying any further payment of compensation which only means that even if assigned lands are resumed, the State need not pay any compensation as per the provisions of the Act in view of the stay orders. Though the ratio in **Mekala Pandu** case (supra) applies to this case, having regard to the orders of the stay, the petitioner can enforce his right to claim compensation only when the view of this Court in **Mekala Pandu** case (supra) is upheld. It is also brought to the notice of this Court that in accordance with the orders of Government in G.O.Ms.No.1307, the market value at the rate of Rs.7,000/- per acre was paid to the petitioner (total amount of Rs.15,698/-), which includes 15% additional ex-gratia as per the Government Order. But, as per the decision in **Mekala Pandu** case (supra), the petitioner is entitled to claim compensation as per the provisions of the Land Acquisition Act, that is to say, solatium, additional compensation and interest. A Mandamus shall issue in the above terms. However, Mandamus shall be enforceable subject to Judgment of the Supreme Court in the appeal filed against **Mekala Pandu** case (supra).

Following the same, the writ petition is disposed of. A writ of Mandamus shall issue to respondents to determine the compensation for an extent of Acs.3.36 in survey No.32/4 of Teegalavancha Village in accordance with the Land Acquisition Act, within a period of six months from the date of receipt of copy of this order and pay the same to the petitioners. This Mandamus shall be subject to result of the Civil Appeal filed by appellant against the Judgment of **Mekala Pandu** (supra). There shall be no order as to costs.

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(V.V.S.RAO,J)

23.11.2007.
pln

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[1] 2004 (2) ALD 451 (LB)
[2] 2006 (3) ALD 148
[3] 2002 (2) ALD 1 (LB) = 2002 (1) ALT 543D (LB)
[4] 1996 (2) ALD 1215 (FB) = 1997 (1) ALT 498 (FB)